

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

LIBERTY MUTUAL FIRE	)	
INSURANCE COMPANY	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO.
	)	1:23-cv-02047-LMM
RED ROOF INNS, INC., RED ROOF	)	
FRANCHISING, LLC, RRI WEST	)	
MANAGEMENT, LLC, FMW RRI	)	
NC, LLC,	)	
	)	
Defendants,	)	
	)	
JANE DOE #1, JANE DOE #2, JANE	)	
DOE #3, JANE DOE #4, W.K., E.H.,	)	
M.M., R.P., M.B., D.P., A.F., C.A.,	)	
R.K., K.P., T.H., H.B., and K.M.	)	
	)	
Nominal Defendants.	)	

**DEFENDANTS RED ROOF INNS, INC., RED ROOF FRANCHISING, LLC,  
RRI WEST MANAGEMENT, LLC, AND FMW RRI NC, LLC’S  
MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Red Roof Inns, Inc., Red Roof Franchising, LLC, RRI West Management, LLC, and FMW RRI, LLC (collectively, “Red Roof”) file this Motion to Dismiss Plaintiff’s First Amended Complaint.

Liberty’s claims for breach of contract and unjust enrichment (Counts X through XV) are not cognizable claims under Georgia law and should be dismissed with prejudice. The Eleventh Circuit has held that Georgia law does not allow a

claim for reimbursement of defense costs where, as here, the policy does not expressly provide such a right. The same logic applies to claims for reimbursement of settlement payments and Georgia's voluntary payment doctrine also bars Liberty's claims.

As to Counts I through IX that seek declaratory relief, dismissal is also warranted. For all the Underlying Lawsuits except one, there are no pending requests for coverage because the suits have been settled or dismissed on the merits. Because there is no longer a need or basis for declaratory relief, Liberty's claims are moot and should be dismissed.

As for the one remaining Underlying Lawsuit—*H.B.*—any declaration on the duty to indemnify is premature and such claims should be dismissed without prejudice. And with respect to the duty to defend, the allegations of the underlying complaint do not unambiguously exclude coverage and Liberty's claims for declaratory relief on the duty to defend should thus be dismissed with prejudice.

For the foregoing reasons and those identified in Defendants' Brief in Support of their Motion to Dismiss, Defendants request that the Court dismiss Plaintiff's First Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6).

Respectfully submitted, this 5th day of September, 2024.

**FELLOWS LABRIOLA LLP**

/s/ Shattuck Ely

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Management, LLC, and FMW RRI, LLC*

**CERTIFICATE OF FONT AND POINT SELECTION**

Undersigned counsel hereby certifies, under LR 7.1(D), NDGa, that the foregoing was prepared in Times New Roman, 14-point font, which is one of the fonts and point selections approved in LR 5.1, NDGa.

/s/ Shattuck Ely  
Shattuck Ely

**CERTIFICATE OF SERVICE**

I certify that this day, I electronically filed the foregoing using the Court's CM/ECF system, which will send email notification to all counsel of record.

Respectfully submitted, this 5th day of September, 2024.

/s/ Shattuck Ely  
Shattuck Ely